

108TH CONGRESS
1ST SESSION

H. R. 878

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2003

Mr. THOMAS (for himself, Mr. HOUGHTON, Mr. CAMP, Mr. LEWIS of Kentucky, Mr. HAYWORTH, Mr. SAM JOHNSON of Texas, Mr. HERGER, Mr. RAMSTAD, Mr. CANTOR, Mr. ENGLISH, and Mr. CRANE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Armed Forces Tax
3 Fairness Act of 2003”.

4 **SEC. 2. SPECIAL RULE FOR MEMBERS OF UNIFORMED**
5 **SERVICES AND FOREIGN SERVICE IN DETER-**
6 **MINING EXCLUSION OF GAIN FROM SALE OF**
7 **PRINCIPAL RESIDENCE.**

8 (a) IN GENERAL.—Subsection (d) of section 121 of
9 the Internal Revenue Code of 1986 (relating to exclusion
10 of gain from sale of principal residence) is amended by
11 adding at the end the following new paragraph:

12 “(10) MEMBERS OF UNIFORMED SERVICES AND
13 FOREIGN SERVICE.—

14 “(A) IN GENERAL.—At the election of an
15 individual with respect to a property, the run-
16 ning of the 5-year period referred to in sub-
17 section (a) with respect to such property shall
18 be suspended during any period that such indi-
19 vidual or such individual’s spouse is serving on
20 qualified official extended duty as a member of
21 the uniformed services or of the Foreign Serv-
22 ice.

23 “(B) MAXIMUM PERIOD OF SUSPENSION.—
24 Such 5-year period shall not be extended more
25 than 5 years by reason of subparagraph (A).

1 “(C) QUALIFIED OFFICIAL EXTENDED
2 DUTY.—For purposes of this paragraph—

3 “(i) IN GENERAL.—The term ‘quali-
4 fied official extended duty’ means any ex-
5 tended duty while serving at a duty station
6 which is at least 150 miles from such prop-
7 erty or while residing under Government
8 orders in Government quarters.

9 “(ii) UNIFORMED SERVICES.—The
10 term ‘uniformed services’ has the meaning
11 given such term by section 101(a)(5) of
12 title 10, United States Code, as in effect
13 on the date of the enactment of this para-
14 graph.

15 “(iii) FOREIGN SERVICE.—The term
16 ‘member of the Foreign Service’ has the
17 meaning given the term ‘member of the
18 Service’ by paragraph (1), (2), (3), (4), or
19 (5) of section 103 of the Foreign Service
20 Act of 1980, as in effect on the date of the
21 enactment of this paragraph.

22 “(iv) EXTENDED DUTY.—The term
23 ‘extended duty’ means any period of active
24 duty pursuant to a call or order to such

duty for a period in excess of 180 days or
for an indefinite period.

“(D) SPECIAL RULES RELATING TO ELECTION.—

“(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

“(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.”.

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendment made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be

1 made or allowed if claim therefor is filed before the
2 close of such period.

3 **SEC. 3. RESTORATION OF FULL EXCLUSION FROM GROSS**
4 **INCOME OF DEATH GRATUITY PAYMENT.**

5 (a) IN GENERAL.—Subsection (b)(3) of section 134
6 of the Internal Revenue Code of 1986 (relating to certain
7 military benefits) is amended by adding at the end the
8 following new subparagraph:

9 “(C) EXCEPTION FOR DEATH GRATUITY
10 ADJUSTMENTS MADE BY LAW.—Subparagraph
11 (A) shall not apply to any adjustment to the
12 amount of death gratuity payable under chapter
13 75 of title 10, United States Code, which is
14 pursuant to a provision of law enacted before
15 December 31, 1991.”.

16 (b) CONFORMING AMENDMENT.—Subparagraph (A)
17 of section 134(b)(3) of such Code is amended by striking
18 “subparagraph (B)” and inserting “subparagraphs (B)
19 and (C)”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to deaths occurring
22 after September 10, 2001.

1 **SEC. 4. EXCLUSION FOR AMOUNTS RECEIVED UNDER DE-**
2 **PARTMENT OF DEFENSE HOMEOWNERS AS-**
3 **SISTANCE PROGRAM.**

4 (a) IN GENERAL.—Section 132(a) of the Internal
5 Revenue Code of 1986 (relating to the exclusion from
6 gross income of certain fringe benefits) is amended by
7 striking “or” at the end of paragraph (6), by striking the
8 period at the end of paragraph (7) and inserting “, or”
9 and by adding at the end the following new paragraph:

10 “(8) qualified military base realignment and
11 closure fringe.”.

12 (b) QUALIFIED MILITARY BASE REALIGNMENT AND
13 CLOSURE FRINGE.—Section 132 of such Code is amended
14 by redesignating subsection (n) as subsection (o) and by
15 inserting after subsection (m) the following new sub-
16 section:

17 “(n) QUALIFIED MILITARY BASE REALIGNMENT AND
18 CLOSURE FRINGE.—

19 “(1) IN GENERAL.—For purposes of this sec-
20 tion, the term ‘qualified military base realignment
21 and closure fringe’ means 1 or more payments under
22 the authority of section 1013 of the Demonstration
23 Cities and Metropolitan Development Act of 1966
24 (42 U.S.C. 3374) (as in effect on the date of the en-
25 actment of this subsection).

1 “(2) LIMITATION.—With respect to any prop-
2 erty, such term shall not include any payment re-
3 ferred to in paragraph (1) to the extent that the
4 sum of all such payments related to such property
5 exceeds the amount described in subsection (c)(1) of
6 such section (as in effect on such date).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to payments made after the date
9 of the enactment of this Act.

10 **SEC. 5. EXPANSION OF COMBAT ZONE FILING RULES TO**
11 **CONTINGENCY OPERATIONS.**

12 (a) IN GENERAL.—Section 7508(a) of the Internal
13 Revenue Code of 1986 (relating to time for performing
14 certain acts postponed by reason of service in combat
15 zone) is amended—

16 (1) by inserting “or when deployed outside the
17 United States away from the individual’s permanent
18 duty station while participating in an operation des-
19 ignated by the Secretary of Defense as a contin-
20 gency operation (as defined in section 101(a)(13) of
21 title 10, United States Code) or which became such
22 a contingency operation by operation of law” after
23 “section 112”,

1 (2) by inserting in the first sentence “or at any
2 time during the period of such contingency oper-
3 ation” after “for purposes of such section”,

4 (3) by inserting “or operation” after “such an
5 area”, and

6 (4) by inserting “or operation” after “such
7 area”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 7508(d) of such Code is amended
10 by inserting “or contingency operation” after
11 “area”.

12 (2) The heading for section 7508 of such Code
13 is amended by inserting “**OR CONTINGENCY OP-**
14 **ERATION**” after “**COMBAT ZONE**”.

15 (3) The item relating to section 7508 of such
16 Code in the table of sections for chapter 77 is
17 amended by inserting “or contingency operation”
18 after “combat zone”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to any period for performing an
21 act which has not expired before the date of the enactment
22 of this Act.

1 **SEC. 6. MODIFICATION OF MEMBERSHIP REQUIREMENT**
2 **FOR EXEMPTION FROM TAX FOR CERTAIN**
3 **VETERANS' ORGANIZATIONS.**

4 (a) IN GENERAL.—Subparagraph (B) of section
5 501(c)(19) of the Internal Revenue Code of 1986 (relating
6 to list of exempt organizations) is amended by striking “or
7 widowers” and inserting “, widowers, ancestors, or lineal
8 descendants”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 7. CLARIFICATION OF THE TREATMENT OF CERTAIN**
13 **DEPENDENT CARE ASSISTANCE PROGRAMS.**

14 (a) IN GENERAL.—Section 134(b) of the Internal
15 Revenue Code of 1986 (defining qualified military benefit)
16 is amended by adding at the end the following new para-
17 graph:

18 “(4) CLARIFICATION OF CERTAIN BENEFITS.—
19 For purposes of paragraph (1), such term includes
20 any dependent care assistance program (as in effect
21 on the date of the enactment of this paragraph) for
22 any individual described in paragraph (1)(A).”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 134(b)(3)(A) of such Code (as
25 amended by section 3) is further amended by insert-

1 ing “and paragraph (4)” after “subparagraphs (B)
2 and (C)”.

3 (2) Section 3121(a)(18) of such Code is amend-
4 ed by striking “or 129” and inserting “, 129, or
5 134(b)(4)”.

6 (3) Section 3306(b)(13) of such Code is amend-
7 ed by striking “or 129” and inserting “, 129, or
8 134(b)(4)”.

9 (4) Section 3401(a)(18) of such Code is amend-
10 ed by striking “or 129” and inserting “, 129, or
11 134(b)(4)”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2002.

15 **SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM**
16 **ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PRO-**
17 **GRAMS, ETC., ON ACCOUNT OF ATTENDANCE**
18 **AT MILITARY ACADEMY.**
19

20 (a) IN GENERAL.—Subparagraph (B) of section
21 530(d)(4) of the Internal Revenue Code of 1986 (relating
22 to exceptions from additional tax for distributions not
23 used for educational purposes) is amended by striking
24 “or” at the end of clause (iii), by redesignating clause (iv)

1 as clause (v), and by inserting after clause (iii) the fol-
2 lowing new clause:

3 “(iv) made on account of the attend-
4 ance of the account holder at the United
5 States Military Academy, the United
6 States Naval Academy, the United States
7 Air Force Academy, the United States
8 Coast Guard Academy, or the United
9 States Merchant Marine Academy, to the
10 extent that the amount of the payment or
11 distribution does not exceed the costs of
12 advanced education (as defined by section
13 2005(e)(3) of title 10, United States Code,
14 as in effect on the date of the enactment
15 of this section) attributable to such attend-
16 ance, or”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall take effect for taxable years beginning
19 after December 31, 2002.

20 **SEC. 9. SUSPENSION OF TAX-EXEMPT STATUS OF TER-**
21 **RORIST ORGANIZATIONS.**

22 (a) IN GENERAL.—Section 501 of the Internal Rev-
23 enue Code of 1986 (relating to exemption from tax on cor-
24 porations, certain trusts, etc.) is amended by redesign-

1 nating subsection (p) as subsection (q) and by inserting
2 after subsection (o) the following new subsection:

3 “(p) SUSPENSION OF TAX-EXEMPT STATUS OF TER-
4 RORIST ORGANIZATIONS.—

5 “(1) IN GENERAL.—The exemption from tax
6 under subsection (a) with respect to any organiza-
7 tion described in paragraph (2), and the eligibility of
8 any organization described in paragraph (2) to apply
9 for recognition of exemption under subsection (a),
10 shall be suspended during the period described in
11 paragraph (3).

12 “(2) TERRORIST ORGANIZATIONS.—An organi-
13 zation is described in this paragraph if such organi-
14 zation is designated or otherwise individually identi-
15 fied—

16 “(A) under section 212(a)(3)(B)(vi)(II) or
17 219 of the Immigration and Nationality Act as
18 a terrorist organization or foreign terrorist or-
19 ganization,

20 “(B) in or pursuant to an Executive order
21 which is related to terrorism and issued under
22 the authority of the International Emergency
23 Economic Powers Act or section 5 of the
24 United Nations Participation Act of 1945 for

1 the purpose of imposing on such organization
2 an economic or other sanction, or

3 “(C) in or pursuant to an Executive order
4 issued under the authority of any Federal law
5 if—

6 “(i) the organization is designated or
7 otherwise individually identified in or pur-
8 suant to such Executive order as sup-
9 porting or engaging in terrorist activity (as
10 defined in section 212(a)(3)(B) of the Im-
11 migration and Nationality Act) or sup-
12 porting terrorism (as defined in section
13 140(d)(2) of the Foreign Relations Author-
14 ization Act, Fiscal Years 1988 and 1989);
15 and

16 “(ii) such Executive order refers to
17 this subsection.

18 “(3) PERIOD OF SUSPENSION.—With respect to
19 any organization described in paragraph (2), the pe-
20 riod of suspension—

21 “(A) begins on the later of—

22 “(i) the date of the first publication of
23 a designation or identification described in
24 paragraph (2) with respect to such organi-
25 zation, or

1 “(ii) the date of the enactment of this
2 subsection, and

3 “(B) ends on the first date that all des-
4 ignations and identifications described in para-
5 graph (2) with respect to such organization are
6 rescinded pursuant to the law or Executive
7 order under which such designation or identi-
8 fication was made.

9 “(4) DENIAL OF DEDUCTION.—No deduction
10 shall be allowed under section 170, 545(b)(2),
11 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for
12 any contribution to an organization described in
13 paragraph (2) during the period described in para-
14 graph (3).

15 “(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL
16 CHALLENGE OF SUSPENSION OR DENIAL OF DEDUC-
17 TION.—Notwithstanding section 7428 or any other
18 provision of law, no organization or other person
19 may challenge a suspension under paragraph (1), a
20 designation or identification described in paragraph
21 (2), the period of suspension described in paragraph
22 (3), or a denial of a deduction under paragraph (4)
23 in any administrative or judicial proceeding relating
24 to the Federal tax liability of such organization or
25 other person.

1 “(6) ERRONEOUS DESIGNATION.—

2 “(A) IN GENERAL.—If—

3 “(i) the tax exemption of any organi-
4 zation described in paragraph (2) is sus-
5 pended under paragraph (1),

6 “(ii) each designation and identifica-
7 tion described in paragraph (2) which has
8 been made with respect to such organiza-
9 tion is determined to be erroneous pursu-
10 ant to the law or Executive order under
11 which such designation or identification
12 was made, and

13 “(iii) the erroneous designations and
14 identifications result in an overpayment of
15 income tax for any taxable year by such
16 organization,

17 credit or refund (with interest) with respect to
18 such overpayment shall be made.

19 “(B) WAIVER OF LIMITATIONS.—If the
20 credit or refund of any overpayment of tax de-
21 scribed in subparagraph (A)(iii) is prevented at
22 any time by the operation of any law or rule of
23 law (including res judicata), such credit or re-
24 fund may nevertheless be allowed or made if the
25 claim therefor is filed before the close of the 1-

1 year period beginning on the date of the last
 2 determination described in subparagraph
 3 (A)(ii).

4 “(7) NOTICE OF SUSPENSIONS.—If the tax ex-
 5 emption of any organization is suspended under this
 6 subsection, the Internal Revenue Service shall up-
 7 date the listings of tax-exempt organizations and
 8 shall publish appropriate notice to taxpayers of such
 9 suspension and of the fact that contributions to such
 10 organization are not deductible during the period of
 11 such suspension.”.

12 (b) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to designations made before, on,
 14 or after the date of the enactment of this Act.

15 **SEC. 10. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT**
 16 **TRAVEL EXPENSES OF NATIONAL GUARD**
 17 **AND RESERVE MEMBERS.**

18 (a) DEDUCTION ALLOWED.—Section 162 of the In-
 19 ternal Revenue Code of 1986 (relating to certain trade or
 20 business expenses) is amended by redesignating subsection
 21 (p) as subsection (q) and inserting after subsection (o) the
 22 following new subsection:

23 “(p) TREATMENT OF EXPENSES OF MEMBERS OF
 24 RESERVE COMPONENT OF ARMED FORCES OF THE
 25 UNITED STATES.—For purposes of subsection (a)(2), in

1 the case of an individual who performs services as a mem-
2 ber of a reserve component of the Armed Forces of the
3 United States at any time during the taxable year, such
4 individual shall be deemed to be away from home in the
5 pursuit of a trade or business for any period during which
6 such individual is away from home in connection with such
7 services.”.

8 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
9 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) of such
10 Code (relating to certain trade and business deductions
11 of employees) is amended by adding at the end the fol-
12 lowing new subparagraph:

13 “(E) CERTAIN EXPENSES OF MEMBERS OF
14 RESERVE COMPONENTS OF THE ARMED FORCES
15 OF THE UNITED STATES.—The deductions al-
16 lowed by section 162 which consist of expenses,
17 not in excess of \$500, paid or incurred by the
18 taxpayer in connection with the performance of
19 services by such taxpayer as a member of a re-
20 serve component of the Armed Forces of the
21 United States for any period during which such
22 individual is more than 100 miles away from
23 home in connection with such services.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred in tax-
3 able years beginning after December 31, 2002.

4 **SEC. 11. PROTECTION OF SOCIAL SECURITY.**

5 The amounts transferred to any trust fund under
6 title II of the Social Security Act shall be determined as
7 if this Act had not been enacted.

○